

Food and Nutrition Service, USDA

§ 276.7

and the Department decides to seek injunctive relief, the Secretary shall refer the matter to the Attorney General with a request that injunctive relief be sought to require compliance.

[Amdt. 168, 45 FR 77263, Nov. 21, 1980]

§ 276.6 Good cause.

(a) When a State agency has failed to comply with provisions of the Act, the regulations issued pursuant to the Act, or the FNS-approved State Plan of Operation, and, thus, is subject to the suspension/disallowance and injunctive relief provisions in §§ 276.4 and 276.5, FNS may determine that the State had good cause for the noncompliance. FNS shall evaluate good cause in these situations on a case-by-case basis, based on any one of the following criteria:

(1) Natural disasters or civil disorders that adversely affect Program operations;

(2) Strikes by State agency staff;

(3) Change in the Food Stamp Program or other Federal or State programs that result in a substantial adverse impact upon a State agency's management of the Program; and

(4) Any other circumstances in which FNS determines good cause to exist.

(b) If FNS determines that food cause existed for a State agency's failure to comply with required provisions and standards, FNS shall not suspend or disallow administrative funds nor seek injunctive relief to compel compliance with the provisions and standards.

[Amdt. 168, 45 FR 77263, Nov. 21, 1980]

§ 276.7 Administrative review process.

(a) *General.* (1) Whenever FNS asserts a claim against a State agency, the State agency may appeal the claim by requesting an administrative review. FNS claims that may be appealed are billings resulting from financial losses involved in the acceptance, storage, and issuance of coupons (§ 276.2), billings based on charges of negligence or fraud (§ 276.3), and disallowances of Federal funds for State agency failures to comply with the Food Stamp Act, regulations, or the FNS-approved State Plan of Operations (§ 276.4).

(2) A State agency aggrieved by a claim shall have the option of requesting a hearing to present its position in

addition to a review of the record and any written submission presented by the State agency. Unless circumstances warrant differently, hearings of appeals of negligence claims and disallowances of Federal funds shall be before an Appeals Board and hearings of appeals of other claims shall be before a single hearing official. In any case, the people reviewing the claim shall be people who were not involved in the decision to file the claim.

(b) *Notice of claim.* When asserting a claim against a State agency, FNS shall provide the notice to the State agency using any delivery method as long as the method provides evidence of the delivery.

(c) *Filing an appeal.* A State agency aggrieved by claims asserted against it may file written appeals with the Secretary, U.S. Department of Agriculture, c/o the Executive Secretary, State Food Stamp Appeals Board, Food and Nutrition Service, USDA, Washington, DC 20250, requesting an opportunity to present information in support of its position. The State agency shall attach a copy of the FNS claim to its appeal. Appeals must be filed with the Executive Secretary or postmarked within 10 days of the date of delivery of the notice of claim. If the State agency does not appeal within the prescribed 10-day period, the FNS decision on the claim shall be final. No extension shall be granted in the time allowed for filing an appeal.

(d) *Computation of time.* In computing any period of time prescribed or allowed under these procedures, the day of delivery of any notice of action, acknowledgment, or reply shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or Federal or State holiday. In that case, the period runs until the end of the next day which is not a Saturday, Sunday or Federal or State holiday.

(e) *Stay of administrative action.* With one exception, the filing of a timely appeal and request for administrative review shall automatically stay the action of FNS to collect the claim asserted against the State agency until a decision is reached on the acceptability